



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Wisconsin Pollutant Discharge
Elimination System Permit Modification
WI-00064815-01-1 Issued to Richfield Dairy, LLC
to be located in the Town of Richfield, Adams County,
Wisconsin

Case No. DNR-16-0002
DNR Case No. DNR-15-069

In the Matter of the Wisconsin Pollutant Discharge
Elimination System Permit No. WI-00064815-02-0
(WPDES Permit) Issued to Richfield Dairy, LLC

Case No. DNR-17-0006
DNR Case No. DNR-17-022

**NOTICE OF PREHEARING CONFERENCE, NOTICE OF CONTESTED CASE HEARING,
AND ORDER FOR PUBLICATION**

Case No. DNR-16-0002

On October 27, 2015, the Department of Natural Resources (DNR) issued a modified Wisconsin Pollutant Discharge Elimination System (WPDES) permit to Richfield Dairy, LLC (Richfield Dairy) to discharge from a livestock facility located in the town of Richfield, Adams County in the Little Roche Cri Creek Watershed of the Central Wisconsin River Basin to Fordham Creek, Little Roche Cri Creek, and the groundwaters of the State of Wisconsin. The modified WPDES permit implemented an order by Administrative Law Judge Jeffrey Boldt (ALJ Boldt) of the Division of Hearings and Appeals issued on September 3, 2014. (Case Nos. IH-12-04 and IH-12-08). ALJ Boldt issued another order that same date dealing with Richfield Dairy's high capacity well approval. (Case Nos. IH-12-03, IH-12-05, DNR-13-021 and DNR-13-027).

On December 22, 2015, a verified petition for contested case hearing was submitted to the DNR, pursuant to Wis. Stat. §§ 227.42 and 283.63. The petition identified the following factual disputes for hearing:

- a. Whether the WPDES Permit as issued complies with ALJ Boldt's order and directive that DNR include a condition "to establish a cap on the number of animal units which can sustainably be accommodated at the site in conjunction with the high capacity well condition approval modification."
- b. Whether the 6,270 animal units authorized by the WPDES permit can be maintained on the 52.5 million gallons per year of water authorized by the well approval.
- c. Whether the authorization to house 6,270 animal units will adversely affect Pleasant Lake and associated resources.

On March 18, 2016, the DNR partially granted Petitioners' request for review pursuant to Wis. Stat. § 283.63 of the modification of the WPDES permit issued to Richfield Dairy. In so doing, the DNR granted only a limited review to be based on the existing agency record and limited the issues for hearing to a legal issue concerning whether the DNR reasonably acted within its authority in implementing ALJ Boldt's WPDES Order. The specific issue that the DNR granted for review is as follows:

- Whether the Animal Unit Limit in the Modified Permit complies with the ALJ Order and DNR's authority under state law.

On July 18, 2016, the Division of Hearings and Appeals received a Request for Hearing from the DNR. On October 11, 2016, the issue was limited by order of this tribunal to the following:

- Whether the Animal Unit Limit in the Modified Permit complies with the ALJ Order.

Pre-hearing conferences were held in 2016, 2017, and 2018. Furthermore, an amended scheduling order was issued in October 18, 2018.

Case No. DNR-17-0006

On February 10, 2017, the DNR issued a WPDES Permit, No. WI-0064815-02-0, to Richfield Dairy to discharge from a livestock operation located in the Town of Richfield, Adams County, in the Little Roche Cri Creek Watershed of the Central Wisconsin River Basin to Fordham Creek, Little Roche Creek, and the groundwaters of the State of Wisconsin.

On March 30, 2017, the Pleasant Lake Management District, Jean MacCubbin, Jon Walsh, Emily Hein, Lynn Templeton, and Brittney Clauson-Semrow, filed a Petition for a Contested Case Hearing with the DNR, pursuant to Wis. Stat. §§ 227.42 and 283.63, and Wis. Admin. Code Chapter NR 2.05, to contest the permit.

By letter dated May 25, 2017, the DNR granted the request for contested case hearing and limited the hearing to the following issues:

1. Whether the absence of an animal unit cap in the Permit is unreasonable, in light of applicable law and the ALJ Order dated September 3, 2014, Division of Hearings and Appeals, Docket IH-12-08.
2. Whether the 6,270 animal units referenced in the nutrient management plan is unreasonable, in light of applicable law because of the water quantity limit of 52.5 million gallons per year of water authorized by the facility's high capacity well approval.
3. Whether Section 2.1 is unreasonable because it does not indicate whether the facility is eligible for alternative concentration limits and, if so, because it does not include such limits.
4. Whether Section 1.5 is unreasonable in its authorization of land-spreading of manure, in light of ch. 283, Wis. Stats., and ch. NR 243, Wis. Adm. Code.

5. Whether Sections 1.1 through 1.5 unreasonably authorize discharges of wastewater in excess of allowable standards, including discharges to groundwater that cause or contribute to exceedances of groundwater standards.
6. Whether Sections 1.5 .8, 1.6.1, 1.6.2, and 1. 7 are unreasonable, to the extent that they do not require any groundwater monitoring or sampling on land-spreading sites.
7. Whether the discharge and groundwater monitoring required by the permit are unreasonable in that it is insufficient to determine whether the permittee is complying with applicable groundwater protection standards and to protect groundwater and drinking water supplies.
8. Whether the permit unreasonably lacks pollutant discharge limitations necessary to comply with applicable law and protect health, safety, and welfare of Petitioners and other members of the public in the vicinity of the permittee's facility who rely on groundwater for drinking water.

On June 16, 2017, the Division of Hearings and Appeals received a Request for Hearing from the DNR. Pre-hearing conferences were held in 2016, 2017, and 2018. Furthermore, an amended scheduling order was issued in October 18, 2018.

NOTICE OF PRE-HEARING CONFERENCE

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a prehearing conference on both of the above-captioned matters, pursuant to Wis. Stat. § 227.46(1), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code § NR 2.08(5), and Wis. Admin. Code § NR 2.12, **at 10:30 AM on June 20, 2019, in Room S148** at the offices of the Division of Hearings and Appeals, 4822 Madison Yards Way, Madison, Wisconsin 53705.

Any person, organization or governmental unit wishing to become a party to this proceeding must attend the conference in person or by an authorized representative. The purpose of the prehearing conference will be to identify parties to the proceeding, to simplify or clarify the issues which may be contested at the hearing, identify witnesses, discuss the exchange of exhibits, establish a discovery schedule, address any other matters as may aid in the disposition of the action, and schedule a date for the contested case hearing. No testimony will be heard at the prehearing conference.

NOTICE OF CONTESTED CASE HEARING

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a contested case hearing on both of the above-captioned matters, pursuant to Wis. Stat. § 227.46(1), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code Ch. NR 2, **on July 15-19, 2019** at the Village Hall, 507 West Lake Street, Friendship, Wisconsin 53934. On July 15, 2019, the proceedings are expected to begin at 10:00 AM and close at 5:30 PM. On July 16 - 19, 2019, the proceedings are expected to begin at 9:00 AM and will close at 5:30 PM.

The contested case hearing will be a Class 1 contested case, pursuant to Wis. Stat. § 227.01(3)(a). The procedures set forth in Wis. Stat. § 283.63(1)(b), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code Ch. NR 2, and Wis. Admin. Code Ch. HA 1 will be followed. Said procedures will closely resemble those that are normally followed at a trial in State Circuit Court. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the contested case hearing.

The permits, petitions and other information relating to the petition are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request prior to the date of the scheduled prehearing or hearing.

MODIFICATION OF PERMIT WITHOUT HEARING

Pursuant to Wis. Admin. Code § NR 203.136(1)(d), the DNR may modify the permit if the parties enter into a signed stipulation to resolve the contested case hearing and the stipulation specifies a change to the permit term or condition that was the subject of the contested case hearing.

ORDER FOR PUBLICATION

THEREFORE, IT IS HEREBY ORDERED THAT:

Pursuant to Wis. Admin. Code §§ NR 2.08(5), NR 203.18(3), and NR 203.02(4)(a), the DNR shall cause a copy of the foregoing Notice to be published once **at least** 30 days before the date of the pre-hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge. Furthermore, pursuant to Wis. Admin. Code § NR 203.18(3), the DNR shall comply with each of the enumerated requirements listed in Wis. Admin. Code §§ NR 203.02(4) and NR 203.03(4). Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **May 25, 2019**.

Dated at Milwaukee, Wisconsin on March 6, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By

ERIC D. DÉFORT
ASSISTANT ADMINISTRATOR
ADMINISTRATIVE LAW JUDGE